

RESEARCH AGREEMENT

This Research Agreement ("Agreement") is made and is effective this ____ day of _____, 2009 ("Effective Date") between the CITY OF SAN JOSE, a municipal corporation ("CITY"), on behalf of the San Jose Police Department ("SJPd"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA on behalf of its Los Angeles Campus ("UCLA"), sometimes referred to below as "Parties."

RECITALS

WHEREAS, UCLA has developed the Consortium for Police Leadership in Equity (CPLE), a research institute designed to advance the state of knowledge in the field of law enforcement on issues of sociological and psychological dynamics in law enforcement agencies and in police/community relations; and

WHEREAS, SJPd has a need for expert services with regard to the work outlined in Section 2 of this Agreement, and at the same time desires to support research at UCLA to advance the accumulation of unique data in the field and to use the research to improve police practices and police/community relations in the City of San Jose, and

WHEREAS, UCLA, through CPLE will conduct the specific research as detailed in Section 2 of this Agreement;

NOW, THEREFORE, CITY and UCLA hereby agree to the above Recitals, and as follows:

1. TERM AND TERMINATION

The obligations under this Agreement shall commence September 18, 2009 and shall continue until terminated by either party in accordance with the terms of the Agreement. Either party may terminate the Research Agreement at any time upon sixty (60) days' written notice to the other party, in accordance with the provisions of Section 10.

Notwithstanding the foregoing, the rights and obligations in this Agreement with respect to (i) Article 5 [Confidential Data], (ii) Article 8 [Publication], (iii) Article 9 [Indemnity] and (iii) Article 15 [No Third Party Rights] shall survive the termination date of this Agreement.

2. SCOPE OF WORK

UCLA will conduct the following tasks:

2.1 Conduct research with the goal of determining the existence or absence of racial/ethnic bias in SJPD's officers' decision to contact and/or arrest individuals. This research will be conducted with a particular focus on comparing so-called "discretionary" stops (e.g. public intoxication arrests, resisting arrest, and disturbing the peace arrests) vs. so-called "nondiscretionary" stops. This will require access to broad categories of arrest data, which SJPD agrees to provide.

2.2 Similar analyses of use of force and victims of crimes among major demographic groups in the City will also be conducted. This data will allow the CPLE research team to investigate aggregate trends and group-based disparities as well as the role of officer-level discretion and/or bias in producing these outcomes. CPLE researchers will be permitted to measure psychological factors of officers who consent to participate in research. These psychological factors may include, but shall not be limited to, measures of officer racial bias, concern with appearing prejudiced, insecure masculinity, anti-Black and anti-Latino dehumanization, and attribution patterns for non-White residents. These data may then be paired with consenting individual officer suspect stops and use of force histories.

2.3 Conduct research on factors that potentially exacerbate any observed inequalities in treatment and outcomes. Specific focus will be on officer and suspect racial phenotypic stereotypicality, expectations of hyper-masculine responses (by one's self and other), and actual hyper-masculine responses on police-community interactions. Using arrest records, booking photographs, and experimental designs, designated CPLE researchers will assess the role of racial phenotype, expectations of masculine displays, and actual masculine displays in the creation of racial inequality.

2.4 Assess SJPD's current police department statistical data reports and data archiving practices. CPLE will advise SJPD on recommended formats for collecting and presenting data to the public, SJPD and CITY. Formatting can be used for future reports to ensure clear communication about equity issues with the public and CITY.

2.5 Conduct research with the goal of ensuring positive communication between the racially and ethnically diverse communities of San Jose and the SJPD.

All research will be conducted at the highest professional standards of each researcher's academic discipline, with the goal of translating that research into knowledge and practice that is useful for SJPD and CITY.

3. DELIVERABLES

Quarterly updates will be delivered in person or by way of a written report provided to the SJPD.

4. CONSIDERATION

UCLA undertakes these commitments in exchange for the value of access to data concerning police work, data which are understood to be valuable in the advancement of research into law enforcement and community standards.

5. ASSURANCE OF CONFIDENTIALITY

5.1 Access to Confidential Data

The parties acknowledge and agree that a fundamental component of this Agreement is the access of UCLA researchers to confidential and sensitive data maintained by SJPd, to be referred to as “Confidential Data.” These data include, but are not limited to, personnel records and Internal Affairs investigation records that are statutorily confidential under California Penal Code Sections 832.7 and 832.8, but shall also extend to police investigation records that have not been disclosed to the public and are exempt from disclosure under California Government Code Section 6254, et seq. Only persons authorized in writing by UCLA who are CPLE researchers shall have access to Confidential Data. UCLA shall be responsible for providing CITY with a written list of researchers who are authorized to access Confidential Data. The parties acknowledge and agree that certain records, files and data which UCLA researchers will be allowed to access are necessary to the performance of UCLA’s obligations to SJPd under this Agreement and will be confidential. These materials will be labeled “Confidential Data” before they are sent to UCLA, or before UCLA researchers are given access to the data. These confidential data are not subject to disclosure to any third party as they are protected by, *inter alia*, the self-critical analysis privilege, HIPAA, the Peace Officers Bill of Rights, California Penal Code Sections 832.7 and 832.8, the California Public Records Act – California Government Code Section 6254(f) and (k), and federal and state constitutional rights of privacy. The sharing of these designated Confidential Data by SJPd with UCLA researchers shall not be deemed a waiver in any way of SJPd’s otherwise valid claim of confidentiality of the Confidential Data, including any applicable exemption under the California Public Records Act.

5.2 Definition of Confidential Data

Confidential Data may include, but may not be limited to the following records and information contained therein:

1. Officer internal affairs files
2. Aggregate departmental crime statistics when associated with departmental data on racial bias.
3. Officer personnel files
4. Officer performance evaluations
5. Citizen complaints (in the aggregate and against specific officers)
6. Notes and recordings of confidential interviews with officers, other employees, community members, suspects, etc.

7. Confidential survey data containing personally identifiable information from officers or community members
8. Surveys or other psychological measurements taken from officers
9. Researcher correspondence and notes derived from other Confidential Data
10. Researcher unpublished opinion that would reveal other Confidential Data
11. Any other records or other data containing personal information and personally identifiable data, that the parties so designate as they work together to carry out the terms of this Research Agreement.

5.3 Treatment of Confidential Data

If either party discloses Confidential Data to the other party, the disclosing party will designate this information as confidential by appropriate legend or instruction established by SJPD and UCLA shall:

- (a) Use the same degree of care to maintain the secrecy of the Confidential Data as it uses to maintain the secrecy of its own information of like kind.
- (b) Use the Confidential Data only to accomplish the purposes of this Agreement and subject to management and audit review by CITY.

5.4 Cooperation in Resisting Disclosure of Confidential Data: The parties further acknowledge and agree that they will each cooperate with the other and will maintain the confidentiality of all data that SJPD or any of its officers or employees provides to UCLA researchers. UCLA researchers will apply for a Certificate of Confidentiality (COC) from the National Institutes of Health (NIH) to provide protection against compulsory disclosure of research data through subpoenas or court orders.

UCLA will object to any attempt by a third party to obtain any of the data listed above from UCLA, including demands or requests made by way of subpoena or public record request and will give notice to SJPD within 72 hours of any request for such data in order to allow SJPD to assert any objections to production on its own behalf and to otherwise participate in any proceeding concerning the production of Confidential Data. UCLA shall tender to and provide CITY with a reasonable opportunity to accept tender of the defense of the litigation in the event that litigation ensues as a result of UCLA's assertion of an objection to the release of Confidential Data in compliance with this Agreement. In the event that CITY does not accept tender of the defense of the litigation, CITY shall bear UCLA's costs of such litigation including, but not limited to, attorneys' fees and litigation support costs.

The parties further acknowledge and agree that the primary purpose of these provisions pertaining to Confidential Data is for the protection of the privacy of individual officers providing information to researchers working under this Agreement and the Agreement shall be construed as far as possible to achieve that purpose. The informed consent UCLA may receive from individuals participating in this research may restrict the release

of personally identifiable information to any party, including SJPd. The UCLA Institutional Review Board (IRB) will determine the language of the informed consent as part of its review of each project undertaken in conjunction with this Agreement. CITY shall be provided with advance written notice of the language of the informed consent and shall be provided with an opportunity to comment upon such language.

6. COOPERATION IN PROVISION OF ACCESS TO CONFIDENTIAL DATA

The parties commit to work together, in good faith, to provide UCLA researchers confidential access to all records necessary to conduct the research contemplated in section 2, above to the extent consistent with CITY'S policies and statutory obligations. SJPd will work with UCLA to request voluntary, informed consent and waivers from individual officers and civilian employees regarding these individuals' personal data to allow for UCLA researchers access to Confidential Data.

The parties further commit to work together, in good faith, to make officers available for research by way of survey, interview and examination. SJPd shall work with UCLA researchers towards obtaining the consent of individual officers for the officers' participation in research studies. SJPd shall advertise research study sessions to officers, shall facilitate UCLA researcher communication with officers regarding study sessions and shall allow reasonable on-duty time for officers to participate in research study sessions. SJPd shall instruct managers and supervisors within the Department to assist in advertising the research study sessions to those they supervise.

7. DEDICATED LIAISON

SJPd shall designate a manager with the rank of Lieutenant or above with the authority to communicate directly with the Chief of Police, to act as a liaison with UCLA researchers. The Liaison will coordinate research efforts between the Department and UCLA researchers, and assist the researchers in understanding and navigating the Department and the San José community. SJPd will consult with Executive Director of the UCLA CPLE, prior to appointing this liaison in order to receive UCLA's input on the skills and knowledge base a candidate for this position ought to possess.

8. PUBLICATION, PUBLICITY, AND OWNERSHIP OF DATA

8.1 Publicity: Both SJPd and UCLA agree to treat this research and each other's participation in this research with discretion. Specifically, SJPd and UCLA agree that their management will communicate with each other when a press query is made of management with regard to the research and shall, to the extent permissible, consult with one another before making statements to the press regarding the research. Neither party will use the name, trade name, trademark or other designation of the other party in connection with any products, promotion, advertising, press release, or publicity without the prior written permission of the other party.

8.2 Exclusive Authority Over Publication and Publication Contents: Subject only to the requirements of this Agreement and state and federal law governing the privacy of the data used in its research, UCLA researchers shall be free to publish the results of their research in their exclusive discretion and as they see fit without approval of or interference by SJPd or anyone associated with SJPd.

8.3 SJPd Right to Advance Notice of Research Findings: Notwithstanding the foregoing, UCLA researchers shall give SJPd no less than 30 calendar days' notice prior to submitting any of their research findings for publication to allow the SJPd an opportunity to protect confidential data. Such notice shall be in writing in accordance with the provisions of Section 10 below and may be in the form of the proposed publication itself or in the form of a written summary of the publication that shall, at a minimum, accurately describe the nature and substance of any conclusions reached by UCLA researchers arising from research undertaken pursuant to this Agreement. Within 30 calendar days of receiving the notice contemplated in this paragraph, SJPd may request that any publication of this research in a scholarly journal mask the identity of SJPd as the agency in which this research was conducted.

This written report shall be deemed a confidential management report and will not be released by the Department to the public or the press within this 30-day review period without written authorization from UCLA. The initial study to be published from research obtained under this Agreement shall have either Phillip Atiba Goff or Tracie Keese as authors, but authorship of results of the research will be determined in accordance with academic standards and custom. Proper acknowledgment will be made for the contributions of each party to the research results being published.

Ownership of Research Data: Except as provided herein, UCLA retains ownership of all data collected in the course of the research undertaken pursuant to this Agreement and shall retain all rights to publish scholarly works using any of these data, subject only to the requirements of this Agreement and federal and state law regarding privacy and the treatment of Confidential Data. Confidential Data that contain personal identifiers of individual officers, civilian employees, or persons whose names appear in investigation records shall remain in the sole and exclusive ownership, custody, and control of CITY and SJPd.

9. INDEMNIFICATION AND MUTUAL DEFENSE

INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation that may otherwise be imposed between the parties under Government Code Section 895.6, or any other statute, regulation or rule that may otherwise affect the terms of this Agreement, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead agree to the following:

A. Claims arising from sole acts or omissions of UCLA: UCLA agrees to defend and indemnify CITY, its agents, officers and employees (referred to collectively in this section as "CITY") from any claim, action or proceeding against CITY, arising solely out of the acts or omissions of UCLA in the performance of this Agreement. At its sole discretion, CITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve UCLA of any obligation imposed by this Agreement. CITY shall notify UCLA promptly of any claim, action or proceeding and cooperate fully in its defense.

B. Claims arising from the sole acts or omissions of CITY: CITY agrees to defend and indemnify UCLA, its agents, officers and employees (referred to collectively in this section as "UCLA") from any claim, action or proceeding against UCLA, arising solely out of the acts or omissions of CITY in the performance of this Agreement. At its sole discretion, UCLA may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve CITY of any obligation imposed by this Agreement. UCLA shall notify CITY promptly of any claim, action or proceeding and cooperate fully in its defense.

C. Claims arising from concurrent acts or omissions: UCLA agrees to defend itself and CITY agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of UCLA and CITY. In such cases, UCLA and CITY agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs except as provided in paragraph E below.

D. Joint defense: Notwithstanding paragraph C above, in a case where UCLA and CITY agree in writing to a joint defense, UCLA and CITY may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of UCLA and CITY. Joint defense counsel shall be selected by mutual agreement of the UCLA and CITY. UCLA and CITY agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph E below. UCLA and CITY further agree that neither party may bind the other to a settlement agreement without the written consent of both UCLA and CITY.

E. Reimbursement and reallocation: Where a trial verdict, or neutral third party in an arbitration award allocates or determines the comparative fault of the parties, UCLA and CITY may seek reimbursement or reallocation, or both, of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

10. NOTICES

Any notice, consent or correspondence shall be effective only in writing personally delivered with an executed acknowledgement of receipt or deposited in the US mail, certified, postage prepaid and addressed as follow:

To University:

For Programmatic Issues:

Executive Director CPLE
address

For contractual Issues: Kim Duiker

Contract and Grant Officer
Office of Contract and Grant Administration
11000 Kimross Avenue, Suite 102
Box 951406
Los Angeles, CA 90095-1406

To SJPd:

Robert Davis
Chief of Police
San Jose Police Department
201 West Mission Street, Room 200
San Jose, CA 95110

11. INDEPENDENT CONTRACTOR

It is understood and agreed that UCLA and its researchers, in the performance of the work and services agreed to be performed by UCLA, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, UCLA shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and UCLA hereby expressly waives any claim it may have to any such rights.

Neither UCLA nor anyone employed by UCLA will be, represent, act, or purport to act as, or be deemed to be, the agent, representative, employee, of CITY. Neither will CITY nor anyone employed by it be, represent, act, or purport to act as, or be deemed to be, the agent, representative or employee of UCLA. Neither CITY nor UCLA has authority to make any statement, representation, or commitment of any kind or to take any action binding upon the other party without the other party's prior written authorization.

12. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile, Portable Document Format (PDF) or photocopied signatures of the Parties will have the same legal validity as original signatures.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior written or oral agreements or understandings with respect thereto.

14. MODIFICATIONS; WAIVER

No amendment or modification of this Agreement will be valid or binding upon the parties unless made in writing and signed by each party. Failure by a party to enforce any rights under this Agreement will not be construed as a waiver of such rights nor will a waiver by a party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

15. NO THIRD PARTY RIGHTS

This Agreement is solely for the benefit of UCLA and CITY. This Agreement is not intended to and does not create any cause of action, claim, defense or other right in favor of any party who is not signatory to this Agreement.

16. ASSIGNABILITY.

The parties agree that the expertise and experience of UCLA, and the researchers at CPLA are material considerations for this Agreement. UCLA shall not assign or transfer any interest in this Agreement nor the performance of any of UCLA's obligations hereunder, without the prior written consent of CITY, and any attempt by UCLA to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

IN WITNESS WHEREOF, the parties have executed this Research Agreement as of the Effective Date.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA on behalf of UCLA:

CITY OF SAN JOSE
a municipal corporation

By: _____
Kim Duiker
Contract and Grant Officer
Office of Contract and Grant
Administration

By: _____
Lee Price, MMC
City Clerk

On behalf of the
SAN JOSE POLICE DEPARTMENT:

By: _____
Robert L. Davis
Chief of Police

APPROVED AS TO FORM:

Carl B. Mitchell
Senior Deputy City Attorney